



California Fair Political Practices Commission

April 6, 1989

Honorable Marian W. La Follette
Assemblywoman, Thirty-Eighth District
California Legislature
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Informal Assistance
Our File No. I-89-122

Dear Assemblywoman La Follette:

This is in response to your request for advice relative to the newly enacted provisions of the Political Reform Act (the "Act").^{1/} Since your advice request does not refer to a specific governmental decision, we are treating your question as a request for informal assistance.^{2/}

In addition, some of your questions deal with the appropriate use of campaign funds. This subject is not covered by the Act and thus is outside of the Commission's jurisdiction. (Section 83111.) "Personal use," as defined in Chapter 5 (commencing with Section 12400) of Division 9 of the Elections Code, is interpreted by the Attorney General's Office.

QUESTIONS

1. How is an officeholder bank account established and may new contributions be deposited in an officeholder bank account?
2. How are campaign expenses distinguished from expenses associated with holding your current Assembly office?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

Honorable Marian W. La Follette

April 6, 1989

Page 2

3. May money in a 1990 campaign bank account be used to pay for plaques that are presented to constituents at community events?

4. May money in a 1990 campaign bank account be used to pay for a meal at a program or event that you or your office staff might attend?

5. Where should money raised through mail and membership fees from your controlled committee, the "38 Club," be deposited?

CONCLUSIONS

1. You may establish a campaign bank account for the purpose of raising and expending funds specifically to defray the costs of holding your present term of office by filing a candidate intention statement and campaign bank account statement (Forms 501 and 502) to solicit and receive contributions for officeholder expenses associated with your election to the Assembly in 1988. If you establish such a campaign bank account, you are required to have a controlled committee designated exclusively for raising funds for expenses associated with your current term of office.

2. Expenditures for fund-raising, campaign strategy, voter registration, mass mailings and other communications in connection with a future election, and any expenditures for campaign staff or consulting services must be paid from the 1990 campaign bank account. All other expenses may be treated as either current officeholder expenses or future campaign expenses and may be paid from either bank account.

3. Money in a 1990 campaign bank account may be used to pay for plaques that are presented to constituents at community events, provided the use is for political purposes pursuant to Elections Code Section 12401.

4. Money in a 1990 campaign bank account may be used to pay for a meal at a program or event that you or your office staff might attend, provided the use is for political purposes pursuant to Elections Code Section 12401.

5. Proposition 73 requires that you have only one controlled committee for each campaign bank account. Unless the "38 Club" is a committee designated to raise funds for one specific bank account, it may not continue in existence as a separate controlled committee.

FACTS

Proposition 73 was adopted by the voters in the June 1988 Primary Election. This new law imposes a number of restrictions

Honorable Marian W. La Follette
April 6, 1989
Page 3

on candidates and officeholders regarding the collection and expenditure of campaign funds. (Section 85100, et seq.) You are currently holding an Assembly office to which you were elected in 1988. You have filed a candidate intention statement and opened a campaign bank account in anticipation of your 1990 election. As an incumbent Assemblywoman, you would like to clarify the application of the new law to expenditures you anticipate in your present term of office.

ANALYSIS

Establishing an Officeholder Bank Account

An elected official currently holding office may establish a campaign bank account for the purpose of collecting funds specifically to defray the costs of the election campaign for his or her current term of office and the costs of holding that term of office. (Section 85201; Regulation 18520 and 18521, copies enclosed.)

Before any contributions can be solicited, received or deposited in the bank account, the official must file a candidate intention statement. (Section 85200; Regulation 18520.) The candidate intention statement shall state that the funds to be collected are to be used to defray expenses associated with the last election and current term of office, and identify the year the election was held.

For example, you are currently holding an office to which you were elected in 1988. You would like to raise money to defray the costs of holding your current term of office. You may establish an officeholder bank account by filing a candidate intention statement designating the 1988 Assembly election, 38th district as the "specific office sought." If such an account is established, you also are required to have a controlled committee designated exclusively for raising funds for expenses associated with your current term of office. (Regulation 18521.)

Contributions may then be deposited in the 1988 Assembly campaign bank account for officeholder expenses during your current term in office. Funds in this bank account may not be used for future campaigns. The Act specifies that the funds collected are held in trust for the specific office identified in the candidate intention statement. (Section 85202(b).)

Please keep in mind that all contributions to your 1988 campaign bank account must be aggregated on a fiscal year basis with contributions to any other campaign bank accounts which you control (e.g. your 1990 and any other future campaign bank accounts), to determine when a contributor has reached the contribution limits of the Act. (Regulation 18520.)

Distinguishing Campaign Expenses from Officeholder Expenses

Government Code Section 85201 requires candidates for elective office to establish one campaign bank account for contributions received for each specific office sought at each particular election. Government Code Section 85202(b) provides that all contributions deposited in the campaign bank account shall be deemed to be held in trust for expenses associated with the election of the candidate to the specific office that he or she intends to seek or expenses associated with holding that office.

You have asked how campaign expenses, which must be paid from your future campaign bank account, are distinguished from officeholder expenses, which may be paid from a current officeholder account. We have been advising that only where expenditures are clearly in connection with a future election, must they be paid from an account established for that future election. Other expenditures may be made from the campaign bank account for either your current term of office or your future election.

For example, where money is spent on mass mailings, political advertising, opinion polls, surveys and other communications within a year before the election, the expenditure must be made from the campaign bank account established for that specific election. In addition, where a communication mentions the candidate's future election campaign, it is deemed to have been made in connection with that future election and must be paid from the campaign bank account established for that future election.

Generally, any other officeholder or political expenditures may be made from either a campaign bank account established for election to the current term of office or from a campaign account established for election to a future term of office.^{3/} Thus, so long as the expenditure is for political purposes pursuant to Elections Code Section 12401 and not for personal purposes, it may be made from either the 1988 or the 1990 account. If the expenditure is for a political communication within one year prior to an election where you are a candidate, or if your status as a candidate for a future office is referred to, however, the expenditure is deemed to be in connection with an election to a future term of office and must be made from the 1990 campaign bank account.

The broader subject of whether the proposed uses for campaign funds are appropriate uses is beyond our jurisdiction. "Personal use," as defined in Chapter 5 (commencing with Section 12400) of

^{3/} The Commission will consider the adoption of proposed Regulation 18525 (copy enclosed) at the May 2, 1989 Commission meeting. This proposed regulation would codify the current staff advice as detailed above.

Honorable Marian W. La Follette
April 6, 1989
Page 5

Division 9 of the Elections Code, is interpreted by the Attorney General's Office.

Deposit of Membership and Mailing Fees

Section 85201 provides that all contributions or loans made to the candidate, or to the candidate's controlled committee shall be deposited in a single campaign bank account. The Commission has interpreted this to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each campaign bank account. (Regulation 18521.) A person running for two separate elective offices may establish one campaign bank account and one controlled committee for each office sought. (Regulation 18520(c).)

You presently have on file a candidate intention statement only for the Assembly 1990 election. Thus, you may have only one controlled committee designated exclusively for raising funds for that campaign bank account and the committee may only receive contributions for your 1990 campaign. A controlled committee is designated to a specific campaign in the committee's statement of organization (Form 410).

Therefore, at present, unless your "38 Club" is the designated controlled committee for your 1990 campaign, it may not collect contributions. In addition, if it is the designated controlled committee for your 1990 account, funds raised by your "38 Club" must be deposited in your 1990 campaign bank account and no other controlled committees may exist.

As discussed previously, you may decide to raise funds for expenses associated with your current term of office and establish a campaign bank account specifically for that purpose (a "1988 campaign bank account"). In that case, you could designate your "38 Club" as the controlled committee for your 1988 campaign bank account. Funds raised by the "38 Club" would then be deposited only in your 1988 campaign bank account and used for the expenses of your current term of office. (Sections 85200-85202; Regulations 18520 and 18521.)

Where a candidate files more than one candidate intention statement and has more than one campaign bank account, written solicitations for contributions must specifically identify the campaign committee for which the funds are sought, and should instruct the contributor to designate the campaign bank account and specific office to which the funds are contributed. (Regulation 18523.1, copy enclosed.) Contributions received must be deposited in the campaign bank account for which the contribution is designated. If a contribution to a candidate does not specify to which committee it has been contributed, the candidate may deposit the contribution in the campaign bank account of his or her choice. (Regulation 18523, copy enclosed.)

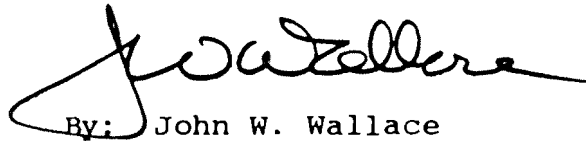
Honorable Marian W. La Follette
April 6, 1989
Page 6

Thus, should you decide to open an Assembly 1988 campaign bank account to cover current officeholder expenses you must also designate a controlled committee for that account. Further, unless your "38 Club" is the designated controlled committee for a campaign account, it may not solicit or receive contributions on your behalf.

If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in black ink, appearing to read "J. Wallace", with a large, stylized initial "J" that loops around the word.

By: John W. Wallace
Counsel, Legal Division

DMG:JWW:plh

Enclosure

SACRAMENTO ADDRESS
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-8366

DISTRICT ADDRESS
11145 TAMPA AVENUE, #17A
NORTHRIDGE, CALIFORNIA 91326
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California Legislature



MARIAN W. LA FOLLETTE
ASSEMBLYWOMAN, THIRTY-EIGHTH DISTRICT

COMMITTEES:
CHAIR, SUBCOMMITTEE ON
EMERGENCY RESPONSE
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VICE CHAIR, GOVERNOR'S
SMALL BUSINESS
ADVISORY COUNCIL

February 15, 1989

John Larson, Chairman
Fair Political Practices Commission
428 J Street, Ste. 800
Sacramento, CA 95804

Dear Chairman Larson:

This is to request your assistance in obtaining specific answers to questions regarding Proposition 73.

Since the passage of Proposition 73 I have made every effort to keep myself informed of the new law's requirements and I must say, it has not been easy. I have sent representatives to seminars sponsored by the FPPC in Sacramento and Los Angeles and have reviewed all communications on the subject from your office. Additionally, I have instructed the treasurer of my campaign committee to call the FPPC whenever a question has arisen regarding the handling of funds.

I recognize that your staff has been burdened by the tremendous volume of requests for clarification and that your job has been made even more difficult by shifting legal decisions. However, I am determined that any and all actions by my campaign committee be in full compliance with the law and I must have a written response to the following:

- 1) May I pay for the purchase of plaques -- presented to constituents at community events -- out of my campaign 1990 account?
- 2) If I or a member of my Assembly office staff attend a program or event that includes a meal, may I pay for the meal out of my campaign 1990 account?
- 3) If the answer is NO to 1 & 2 and I must create a separate account for paying for these items, how does one differentiate between expenses that augment my Assembly office and those which are specifically campaign related -- do you have set guidelines?

Feb 16 9 09 AM '89

Mr. John Larson
February 15, 1989
Page 2

- 4) If I must create this separate account may I accept contributions for this account?
- 5) If I raise funds from my 38 Club -- a community based group that I meet with on a regular basis to discuss legislation and politics and who are charged a small membership fee to cover the cost of mailings and meetings -- which fund is best used for this purpose?

I would appreciate a written reply to these questions by March 1, 1989.

Sincerely,



MARIAN W. La FOLLETTE

MWL:jm



California Fair Political Practices Commission

February 27, 1989

Honorable Marian W. LaFollette
Member of the Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Letter No. 89-122

Dear Assemblymember LaFollette:

Your letter requesting advice under the Political Reform Act was received on February 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh